

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1343

(Reference to Senate engrossed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 6-901, Arizona Revised Statutes, is amended to read:

6-901. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified.

2. "Compensation" means anything of value or any benefit, including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time.

3. "Investor" means a person who lends or invests money in mortgage loans.

4. "License" means a license issued under this article.

5. "Licensee" means a person licensed under this article.

6. "Mortgage broker" means a person who is not exempt under section 6-902 and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.

7. "Mortgage loan" means a loan secured by a mortgage or deed of trust or any lien interest on real estate located in this state created with the consent of the owner of the real estate, INCLUDING ANY MORTGAGE LOAN TRANSACTION DESCRIBED IN TITLE 33, CHAPTER 6, ARTICLE 4.

8. "Mortgage loan closing" means the day by which all documents relating to the mortgage loan have been executed and recorded and all monies have been accounted for under the terms of the escrow instructions.

Sec. 2. Section 6-941, Arizona Revised Statutes, is amended to read:

6-941. Definitions

In this article, unless the context otherwise requires:

1 1. "Affiliate" means an entity which directly or indirectly, through
2 one or more intermediaries, controls, is controlled by or is under common
3 control with the entity specified.

4 2. "Compensation" means anything of value or any benefit, including
5 points, commissions, bonuses, referral fees, loan origination fees and other
6 similar fees but excluding periodic interest resulting from the application
7 of the note rate of interest to the outstanding principal balance remaining
8 unpaid from time to time.

9 3. "License" means a license issued under this article.

10 4. "Licensee" means a person licensed under this article.

11 5. "Mortgage banker" means a person who is not exempt under section
12 6-942 and who for compensation or in the expectation of compensation either
13 directly or indirectly makes, negotiates or offers to make or negotiate a
14 mortgage banking loan or a mortgage loan.

15 6. "Mortgage banking loan" means a loan which is funded exclusively
16 from the mortgage banker's own resources, which is directly or indirectly
17 secured by a mortgage or deed of trust or any lien interest on real estate
18 located in this state and which is created with the consent of the owner of
19 the real property. For the purposes of this paragraph, "own resources" means
20 any of the following:

21 (a) Cash, corporate capital, warehouse credit lines at commercial
22 banks, savings banks or savings and loan associations or other sources that
23 are liability items on the mortgage banker's financial statements for which
24 its assets are pledged.

25 (b) Correspondent contracts between the mortgage banker and a bank,
26 savings bank, trust company, savings and loan association, credit union,
27 profit sharing or pension trust, consumer lender or insurance company.

28 (c) The mortgage banker's affiliates' cash, corporate capital,
29 warehouse credit lines at commercial banks or other sources that are
30 liability items on the affiliates' financial statements for which the
31 affiliates' assets are pledged.

32 7. "Mortgage banking loan closing" means the day by which all
33 documents relating to the mortgage banking loan or mortgage loan have been
34 executed and recorded and all monies have been accounted for.

1 8. "Mortgage loan" means any loan, other than a mortgage banking loan,
2 secured by a mortgage or deed of trust or any lien interest on real estate
3 located in this state and created with the consent of the owner of the real
4 estate, INCLUDING ANY MORTGAGE LOAN TRANSACTION DESCRIBED IN TITLE 33,
5 CHAPTER 6, ARTICLE 4.

6 Sec. 3. Title 33, chapter 6, Arizona Revised Statutes, is amended by
7 adding article 4, to read:

8 ARTICLE 4. HOME EQUITY PURCHASERS

9 33-761. Definitions

10 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 1. "BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE" MEANS ANYONE ACTING
12 IN GOOD FAITH WHO PURCHASES THE RESIDENTIAL REAL PROPERTY FROM THE EQUITY
13 PURCHASER FOR VALUABLE CONSIDERATION OR PROVIDES THE EQUITY PURCHASER WITH A
14 MORTGAGE OR DEED OF TRUST OR PROVIDES A SUBSEQUENT BONA FIDE PURCHASER WITH A
15 MORTGAGE OR DEED OF TRUST IF THE BONA FIDE PURCHASER HAD NO NOTICE OF THE
16 EQUITY SELLER'S CONTINUING RIGHT TO, OR EQUITY IN, THE PROPERTY BEFORE THE
17 ACQUISITION OF TITLE OR ENCUMBRANCE OR OF ANY VIOLATION OF THIS ARTICLE BY
18 THE EQUITY PURCHASER AS RELATED TO THE PROPERTY.

19 2. "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING SATURDAY, SUNDAY,
20 OR PUBLIC HOLIDAYS.

21 3. "COVERED CONTRACT" MEANS ANY CONTRACT, AGREEMENT OR ARRANGEMENT, OR
22 ANY TERM OF A CONTRACT, AGREEMENT OR ARRANGEMENT, BETWEEN AN EQUITY PURCHASER
23 AND EQUITY SELLER THAT IS EITHER:

24 (a) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE.

25 (b) INCIDENT TO THE SALE OF A RESIDENCE IN FORECLOSURE OR DEFAULT IF
26 THE CONTRACT, AGREEMENT OR ARRANGEMENT INCLUDES A RECONVEYANCE ARRANGEMENT.

27 4. "DEFAULT" MEANS THAT THE EQUITY SELLER IS TWO MONTHS OR MORE BEHIND
28 IN PAYMENTS ON A MORTGAGE OR A DEED OF TRUST.

29 5. "EQUITY PURCHASER" MEANS ANY PERSON WHO ACQUIRES TITLE TO ANY
30 RESIDENCE THAT IS THE SUBJECT OF A NOTICE OF TRUSTEE SALE, THAT IS IN
31 FORECLOSURE OR, IF APPLICABLE, THAT IS IN DEFAULT, OR THE PERSON'S
32 REPRESENTATIVE, EXCEPT A PERSON WHO ACQUIRES TITLE AS FOLLOWS:

33 (a) TO USE THE PROPERTY AS A PRIMARY RESIDENCE AND THE PERSON ACTUALLY
34 USES THE PROPERTY AS A PRIMARY RESIDENCE.

35 (b) BY A TRUSTEE'S DEED ON SALE PURSUANT TO LAW.

1 (c) AT ANY SALE OF PROPERTY AUTHORIZED BY STATUTE.

2 (d) BY ORDER OR JUDGMENT OF ANY COURT.

3 (e) FROM A SPOUSE OR FROM A PARENT, GRANDPARENT, CHILD, GRANDCHILD OR
4 SIBLING OF THE PERSON OR THE PERSON'S SPOUSE.

5 (f) AS AN INTERNAL REVENUE SERVICE DESIGNATED NONPROFIT HOUSING
6 ORGANIZATION OR AS A PUBLIC HOUSING AGENCY.

7 (g) AS A BONA FIDE PURCHASER OR ENCUMBRANCER FOR VALUE.

8 6. "EQUITY SELLER" MEANS A NATURAL PERSON WHO IS A PROPERTY OWNER OR
9 HOMEOWNER AT THE TIME OF THE EQUITY SALE.

10 7. "FORECLOSURE" MEANS THAT AN ACTION PURSUANT TO SECTION 33-721 HAS
11 BEEN FILED TO FORECLOSE A MORTGAGE OR DEED OF TRUST SECURED BY THE SUBJECT
12 PROPERTY OR THE SUBJECT PROPERTY IS ON AN ACTIVE PROPERTY TAX LIEN SALE LIST.

13 8. "PROPERTY OWNER" OR "HOMEOWNER" MEANS ANY OR ALL RECORD TITLE
14 OWNERS OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE OR, IF APPLICABLE, IN
15 DEFAULT AT THE TIME OF THE EQUITY SALE.

16 9. "RECONVEYANCE ARRANGEMENT" MEANS:

17 (a) THE TRANSFER OF TITLE TO RESIDENTIAL REAL PROPERTY BY AN EQUITY
18 SELLER WHO IS IN DEFAULT OR FORECLOSURE, EITHER BY TRANSFER OF INTEREST FROM
19 AN EQUITY SELLER TO AN EQUITY PURCHASER OR BY CREATION OF A MORTGAGE, DEED OF
20 TRUST OR OTHER LIEN OR ENCUMBRANCE DURING THE TIME OF DEFAULT OR FORECLOSURE
21 THAT ALLOWS THE EQUITY PURCHASER TO OBTAIN LEGAL OR EQUITABLE TITLE TO ALL OR
22 PART OF THE PROPERTY.

23 (b) THE SUBSEQUENT CONVEYANCE OR PROMISE OF A SUBSEQUENT CONVEYANCE,
24 OF AN INTEREST, INCLUDING A PURCHASE AGREEMENT, OPTION TO PURCHASE OR LEASE,
25 BACK TO THE EQUITY SELLER BY THE EQUITY PURCHASER THAT ALLOWS THE EQUITY
26 SELLER TO REGAIN POSSESSION OF THE PROPERTY.

27 10. "REPRESENTATIVE" MEANS A PERSON WHO IN ANY MANNER SOLICITS,
28 INDUCES, ARRANGES OR CAUSES ANY EQUITY SELLER TO TRANSFER TITLE OR SOLICITS
29 ANY MEMBER OF THE EQUITY SELLER'S FAMILY OR HOUSEHOLD TO INDUCE OR CAUSE ANY
30 EQUITY SELLER TO TRANSFER TITLE TO THE RESIDENCE IN FORECLOSURE OR, IF
31 APPLICABLE, IN DEFAULT TO THE EQUITY PURCHASER.

32 11. "RESIDENCE" AND "RESIDENTIAL REAL PROPERTY" MEANS RESIDENTIAL REAL
33 PROPERTY CONSISTING OF ONE TO FOUR FAMILY DWELLING UNITS, ONE OF WHICH THE
34 EQUITY SELLER OCCUPIES OR OCCUPIED AT A TIME IMMEDIATELY BEFORE THE EQUITY
35 SALE AS A PRIMARY RESIDENCE.

1 12. "SALE OF A RESIDENCE" INCLUDES A TRANSACTION IN WHICH AN EQUITY
2 SELLER RECEIVES CONSIDERATION FROM THE EQUITY PURCHASER AND A TRANSACTION
3 INVOLVING A TRANSFER OF TITLE TO THE EQUITY PURCHASER IN WHICH NO
4 CONSIDERATION IS PROVIDED TO THE EQUITY SELLER.

5 33-762. Licensing of equity purchaser required

6 A PERSON SHALL NOT ACT AS AN EQUITY PURCHASER IN THIS STATE IF THE
7 PERSON IS NOT LICENSED PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2.

8 33-763. Covered contracts; notices

9 A. EVERY COVERED CONTRACT AND NOTICE OF CANCELLATION ATTACHED TO THE
10 CONTRACT SHALL BE WRITTEN IN LETTERS OF A SIZE EQUAL TO AT LEAST TWELVE-POINT
11 BOLD TYPE, IN ENGLISH OR IN BOTH ENGLISH AND SPANISH, IF SPANISH IS THE
12 PRIMARY LANGUAGE OF THE EQUITY SELLER, AND SHALL BE FULLY COMPLETED AND
13 SIGNED AND DATED BY THE EQUITY SELLER AND EQUITY PURCHASER. ANY INSTRUMENT
14 OF CONVEYANCE SHALL BECOME EFFECTIVE NO SOONER THAN MIDNIGHT OF THE FIFTH
15 BUSINESS DAY AFTER THE DATE ON WHICH THE COVERED CONTRACT IS EXECUTED.

16 B. ALL COVERED CONTRACTS SHALL CONTAIN THE ENTIRE AGREEMENT OF THE
17 PARTIES AND SHALL INCLUDE THE FOLLOWING TERMS:

18 1. THE NAME, BUSINESS ADDRESS AND THE TELEPHONE NUMBER OF THE EQUITY
19 PURCHASER.

20 2. THE ADDRESS OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,
21 DEFAULT.

22 3. THE TOTAL CONSIDERATION TO BE GIVEN BY THE EQUITY PURCHASER IN
23 CONNECTION WITH OR INCIDENT TO THE SALE.

24 4. A COMPLETE DESCRIPTION OF THE TERMS OF PAYMENT OR OTHER
25 CONSIDERATION, INCLUDING ANY SERVICES OF ANY NATURE THE EQUITY PURCHASER
26 AGREES TO PERFORM FOR THE EQUITY SELLER BEFORE OR AFTER THE SALE.

27 5. THE TIME, IF ANY, AT WHICH PHYSICAL POSSESSION OF THE RESIDENCE IS
28 TO BE TRANSFERRED TO THE EQUITY PURCHASER AND THE RESIDENCE VACATED BY THE
29 EQUITY SELLER.

30 6. THE TERMS OF ANY RENTAL OR LEASE AGREEMENT.

31 7. THE TERMS OF ANY RECONVEYANCE ARRANGEMENT.

32 8. A NOTICE OF CANCELLATION AS PROVIDED IN SUBSECTION E OF THIS
33 SECTION.

34 9. THE FOLLOWING NOTICE, WHICH MUST CONTAIN THE NAME OF THE EQUITY
35 PURCHASER AND THE DATE AND TIME BY WHICH THE COVERED CONTRACT MUST BE

1 CANCELED, SHALL BE COMPLETED BY THE EQUITY PURCHASER AND SHALL APPEAR ON THE
2 CONTRACT IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED FOR THE EQUITY SELLER'S
3 SIGNATURE AND SHALL BE IN AT LEAST FOURTEEN-POINT BOLD TYPE IF THE COVERED
4 CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF THE COVERED CONTRACT IS TYPED:

5 NOTICE REQUIRED BY ARIZONA LAW

6 YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF
7 (DATE) . (NAME OF EQUITY PURCHASER) OR ANYONE
8 WORKING FOR (NAME OF EQUITY PURCHASER) CANNOT ASK YOU TO
9 SIGN OR HAVE YOU SIGN ANY DEED OR ANY OTHER DOCUMENT UNTIL YOUR
10 RIGHT TO CANCEL THIS CONTRACT HAS ENDED. SEE ATTACHED NOTICE OF
11 CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. YOU SHOULD
12 ALWAYS CONSULT AN ATTORNEY OR COMMUNITY ORGANIZATION BEFORE
13 SIGNING ANY LEGAL DOCUMENTS CONCERNING YOUR HOME. IT IS
14 ADVISABLE THAT YOU FIND YOUR OWN ATTORNEY AND NOT CONSULT WITH AN
15 ATTORNEY WHO HAS BEEN PROVIDED TO YOU BY THE PURCHASER. THE LAW
16 REQUIRES THAT THIS CONTRACT CONTAIN THE ENTIRE AGREEMENT. YOU
17 SHOULD NOT RELY ON ANY OTHER WRITTEN OR ORAL AGREEMENT OR
18 PROMISE.

19 C. THE EQUITY PURCHASER SHALL ACCURATELY ENTER IN THE NOTICE SET FORTH
20 IN SUBSECTION B OF THIS SECTION THE DATE ON WHICH THE RIGHT TO CANCEL ENDS.
21 THE COVERED CONTRACT REQUIRED BY THIS SECTION SHALL SURVIVE DELIVERY OF ANY
22 INSTRUMENT OF CONVEYANCE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,
23 IN DEFAULT AND SHALL HAVE NO EFFECT ON PERSONS OTHER THAN THE PARTIES TO THE
24 COVERED CONTRACT.

25 D. IN ADDITION TO THE RIGHT OF RESCISSION DESCRIBED IN SECTION 33-764,
26 SUBSECTION E, THE EQUITY SELLER HAS THE RIGHT TO CANCEL ANY COVERED CONTRACT
27 WITH AN EQUITY PURCHASER UNTIL MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING
28 THE DAY ON WHICH THE EQUITY SELLER AND EQUITY PURCHASER SIGN A COVERED
29 CONTRACT THAT COMPLIES WITH THIS SECTION. CANCELLATION OCCURS WHEN THE
30 EQUITY SELLER, OR A REPRESENTATIVE OF THE EQUITY SELLER, PERSONALLY DELIVERS
31 WRITTEN NOTICE OF CANCELLATION TO THE ADDRESS SPECIFIED IN THE COVERED
32 CONTRACT OR SENDS TO THE BUSINESS ADDRESS OF THE EQUITY PURCHASER LISTED IN
33 THE COVERED CONTRACT, VIA FAX, UNITED STATES MAIL OR OTHER MEANS OF WRITTEN
34 COMMUNICATION, OR THROUGH AN ESTABLISHED COMMERCIAL LETTER DELIVERY SERVICE,
35 A LETTER INDICATING CANCELLATION. PROOF OF FAX DELIVERY OR PROOF OF MAILING

1 CREATES A PRESUMPTION THAT THE NOTICE OF CANCELLATION HAS BEEN DELIVERED. A
2 NOTICE OF CANCELLATION GIVEN BY THE EQUITY SELLER PURSUANT TO THIS SUBSECTION
3 NEED NOT TAKE THE PARTICULAR FORM AS PROVIDED WITH THE COVERED CONTRACT AND,
4 HOWEVER EXPRESSED, IS EFFECTIVE IF IT INDICATES THE INTENTION OF THE EQUITY
5 SELLER NOT TO BE BOUND BY THE COVERED CONTRACT. WITHIN TEN DAYS AFTER
6 RECEIPT OF A NOTICE OF CANCELLATION GIVEN IN ACCORDANCE WITH THIS SUBSECTION,
7 THE EQUITY PURCHASER SHALL RETURN WITHOUT CONDITION ANY ORIGINAL COVERED
8 CONTRACT AND ANY OTHER DOCUMENTS SIGNED BY THE EQUITY SELLER AS WELL AS ANY
9 FEE OR OTHER CONSIDERATION RECEIVED BY THE EQUITY PURCHASER FROM THE EQUITY
10 SELLER. CANCELLATION OF THE CONTRACT SHALL RELEASE THE EQUITY SELLER OF ALL
11 OBLIGATIONS TO PAY FEES TO THE EQUITY PURCHASER.

12 E. THE COVERED CONTRACT SHALL BE ACCOMPANIED BY A FORM COMPLETED BY
13 THE EQUITY PURCHASER IN DUPLICATE, CAPTIONED "NOTICE OF CANCELLATION" IN AT
14 LEAST TWELVE-POINT BOLD TYPE IF THE COVERED CONTRACT IS PRINTED OR IN CAPITAL
15 LETTERS IF THE COVERED CONTRACT IS TYPED. THIS FORM SHALL BE ATTACHED TO THE
16 COVERED CONTRACT, SHALL BE EASILY DETACHABLE AND SHALL CONTAIN, IN AT LEAST
17 TWELVE-POINT TYPE IF THE COVERED CONTRACT IS PRINTED OR IN CAPITAL LETTERS IF
18 THE COVERED CONTRACT IS TYPED, THE FOLLOWING STATEMENT WRITTEN IN THE SAME
19 LANGUAGE USED IN THE COVERED CONTRACT:

20 NOTICE OF CANCELLATION

21 THIS CONTRACT WAS ENTERED INTO ON ____ (ENTER DATE COVERED
22 CONTRACT SIGNED) _____. YOU MAY CANCEL THIS CONTRACT FOR THE SALE
23 OF YOUR HOUSE, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME
24 BEFORE MIDNIGHT OF ____ (ENTER DATE) _____. TO CANCEL THIS
25 TRANSACTION, PERSONALLY DELIVER A SIGNED AND DATED COPY OF THIS
26 CANCELLATION NOTICE, OR SEND IT BY FAX, UNITED STATES MAIL OR AN
27 ESTABLISHED COMMERCIAL LETTER DELIVERY SERVICE, INDICATING
28 CANCELLATION TO ____ (NAME OF PURCHASER) ____, AT ____ (STREET
29 ADDRESS OF PURCHASER'S PLACE OF BUSINESS AND FAX NUMBER, IF
30 ANY) ____ NOT LATER THAN MIDNIGHT OF ____ (ENTER DATE) _____. IF YOU
31 WISH TO CANCEL THIS CONTRACT, SIGN AND DATE BOTH COPIES AND
32 RETURN ONE COPY IMMEDIATELY TO THE PURCHASER. I HEREBY CANCEL
33 THIS TRANSACTION.

34 _____
35 (SELLER'S SIGNATURE)

(DATE)

1 F. THE EQUITY PURCHASER SHALL PROVIDE EACH EQUITY SELLER WITH TWO
2 COPIES OF THE COVERED CONTRACT AND ATTACHED NOTICE OF CANCELLATION. THE
3 EQUITY PURCHASER SHALL ACCURATELY ENTER THE DATE ON WHICH THE RIGHT TO CANCEL
4 ENDS.

5 33-764. False or misleading statements; right to rescission;
6 prohibited acts; violations; classification

7 A. BEFORE MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE ON WHICH
8 THE COVERED CONTRACT IS EXECUTED, THE EQUITY PURCHASER SHALL NOT DO ANY OF
9 THE FOLLOWING:

10 1. ACCEPT FROM ANY EQUITY SELLER AN EXECUTION OF, OR INDUCE ANY EQUITY
11 SELLER TO EXECUTE, ANY INSTRUMENT OF CONVEYANCE OF ANY INTEREST IN THE
12 RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN DEFAULT.

13 2. RECORD WITH THE COUNTY RECORDER ANY DOCUMENT, INCLUDING ANY
14 INSTRUMENT OF CONVEYANCE, SIGNED BY THE EQUITY SELLER.

15 3. TRANSFER OR ENCUMBER OR PURPORT TO TRANSFER OR ENCUMBER TO ANY
16 THIRD PARTY ANY INTEREST IN THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE,
17 IN DEFAULT.

18 4. PAY THE EQUITY SELLER ANY CONSIDERATION.

19 5. SUGGEST, ENCOURAGE OR PROVIDE ANY FORM THAT ALLOWS THE EQUITY
20 SELLER TO WAIVE THE EQUITY SELLER'S RIGHT TO CANCEL OR RESCIND UNDER THIS
21 SECTION.

22 B. AN EQUITY PURCHASER SHALL NOT MAKE A FALSE OR MISLEADING STATEMENT
23 REGARDING:

24 1. THE VALUE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN
25 DEFAULT.

26 2. THE AMOUNT OF PROCEEDS THE EQUITY SELLER WILL RECEIVE AFTER A
27 FORECLOSURE SALE PURSUANT TO ARTICLE 2 OF THIS CHAPTER OR A TRUSTEE'S SALE
28 PURSUANT TO CHAPTER 6.1 OF THIS TITLE.

29 3. THE TIMING OF THE JUDICIAL FORECLOSURE PROCESS OR SALE OF TRUST
30 PROPERTY.

31 4. ANY CONTRACT TERM.

32 5. THE EQUITY SELLER'S RIGHTS OR OBLIGATIONS INCIDENT TO OR ARISING
33 OUT OF THE SALE TRANSACTION.

34 6. THE NATURE OF ANY DOCUMENT THAT THE EQUITY PURCHASER INDUCES THE
35 EQUITY SELLER TO SIGN.

1 7. THE SALE OF THE RESIDENCE IN FORECLOSURE OR, IF APPLICABLE, IN
2 DEFAULT, OR CONCERNING THE RECONVEYANCE ARRANGEMENT.

3 C. AN EQUITY PURCHASER SHALL NOT REPRESENT, DIRECTLY OR INDIRECTLY,
4 THAT:

5 1. THE EQUITY PURCHASER IS ACTING AS AN ADVISOR OR A CONSULTANT FOR OR
6 IN ANY OTHER MANNER IS ACTING ON BEHALF OF THE EQUITY SELLER.

7 2. THE EQUITY PURCHASER IS CERTIFIED OR LICENSED IF THIS IS NOT TRUE,
8 OR THAT THE EQUITY PURCHASER IS NOT LICENSED IF THE EQUITY PURCHASER IS
9 ACTUALLY LICENSED.

10 3. THE EQUITY PURCHASER IS ASSISTING THE EQUITY SELLER TO SAVE THE
11 HOUSE UNLESS THE EQUITY PURCHASER HAS A GOOD FAITH BASIS FOR THE
12 REPRESENTATION.

13 4. THE EQUITY PURCHASER IS ASSISTING THE EQUITY SELLER IN PREVENTING A
14 COMPLETED FORECLOSURE OR TRUSTEE'S SALE UNLESS THE EQUITY PURCHASER HAS A
15 GOOD FAITH BASIS FOR THE REPRESENTATION.

16 D. IT IS UNLAWFUL:

17 1. FOR ANY EQUITY PURCHASER TO INITIATE, ENTER INTO, NEGOTIATE OR
18 CONSUMMATE ANY COVERED CONTRACT INVOLVING RESIDENTIAL REAL PROPERTY IN
19 FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE, OR, IF APPLICABLE, IN DEFAULT IF
20 THE EQUITY PURCHASER, BY THE TERMS OF SUCH A COVERED CONTRACT, TAKES
21 UNCONSCIONABLE ADVANTAGE OF THE EQUITY SELLER.

22 2. FOR ANY EQUITY PURCHASER TO OPERATE IN THIS STATE WITHOUT A LICENSE
23 PURSUANT TO TITLE 6, CHAPTER 9, ARTICLE 1 OR 2, UNLESS OTHERWISE PROVIDED BY
24 LAW.

25 E. ANY TRANSACTION INVOLVING RESIDENTIAL REAL PROPERTY IN FORECLOSURE
26 OR, IF APPLICABLE, IN DEFAULT THAT IS IN MATERIAL VIOLATION OF SECTION
27 33-763, SUBSECTION A, B OR E, SECTION 33-765, OR THIS SECTION IS VOIDABLE AND
28 MAY BE RESCINDED BY THE EQUITY SELLER WITHIN TWO YEARS AFTER THE DATE OF THE
29 RECORDING OF THE CONVEYANCE OF THE RESIDENTIAL REAL PROPERTY IN FORECLOSURE
30 OR SUBJECT TO A TRUSTEE'S SALE, OR, IF APPLICABLE, IN DEFAULT. THE
31 RESCISSION IS EFFECTIVE BY GIVING WRITTEN NOTICE TO THE EQUITY PURCHASER AND
32 THE EQUITY PURCHASER'S SUCCESSOR IN INTEREST, IF THE SUCCESSOR IS NOT A BONA
33 FIDE PURCHASER OR ENCUMBRANCER FOR VALUE AS PROVIDED IN SUBSECTION F OF THIS
34 SECTION, AND BY RECORDING THE NOTICE WITH THE COUNTY RECORDER OF THE COUNTY
35 IN WHICH THE PROPERTY IS LOCATED WITHIN TWO YEARS OF THE DATE AFTER THE

1 RECORDING OF THE CONVEYANCE TO THE EQUITY PURCHASER. THE NOTICE OF
2 RESCISSION SHALL CONTAIN THE NAME OF THE EQUITY SELLER AND THE NAME OF THE
3 EQUITY PURCHASER IN ADDITION TO ANY SUCCESSOR IN INTEREST HOLDING RECORD
4 TITLE TO THE RESIDENTIAL REAL PROPERTY AND SHALL PARTICULARLY DESCRIBE THE
5 RESIDENTIAL REAL PROPERTY. THE EQUITY PURCHASER AND THE EQUITY PURCHASER'S
6 SUCCESSOR IN INTEREST, IF THE SUCCESSOR IS NOT A BONA FIDE PURCHASER OR
7 ENCUMBRANCER FOR VALUE AS SET FORTH IN SUBSECTION F OF THIS SECTION, SHALL
8 HAVE TWENTY DAYS AFTER THE DELIVERY OF THE NOTICE IN WHICH TO RECONVEY TITLE
9 TO THE PROPERTY FREE AND CLEAR OF ENCUMBRANCES CREATED SUBSEQUENT TO THE
10 RESCINDED TRANSACTION AND DUE TO THE ACTIONS OF THE EQUITY PURCHASER. AS A
11 CONDITION OF THE RECONVEYANCE OF TITLE, THE EQUITY SELLER SHALL RETURN TO THE
12 EQUITY PURCHASER ANY CONSIDERATION RECEIVED FROM THE EQUITY PURCHASER AS PART
13 OF THE ORIGINAL TRANSACTION. ON FAILURE TO RECONVEY TITLE WITHIN THIS TIME,
14 THE EQUITY SELLER MAY BRING AN ACTION TO ENFORCE THE RESCISSION AND FOR
15 CANCELLATION OF THE COVERED CONTRACT AND DEED.

16 F. SUBSECTION E OF THIS SECTION DOES NOT AFFECT THE INTEREST OF A BONA
17 FIDE PURCHASER OR ENCUMBRANCER FOR VALUE IF THE PURCHASE OR ENCUMBRANCE
18 OCCURRED BEFORE THE RECORDING OF THE NOTICE OF RESCISSION PURSUANT TO
19 SUBSECTION E OF THIS SECTION. KNOWLEDGE THAT THE PROPERTY WAS RESIDENTIAL
20 REAL PROPERTY IN FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE, OR IF
21 APPLICABLE, IN DEFAULT SHALL NOT IMPAIR THE STATUS OF SUCH PERSONS OR
22 ENTITIES AS BONA FIDE PURCHASERS OR ENCUMBRANCERS FOR VALUE. SUBSECTION E OF
23 THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS TO RIGHTS
24 OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL PROPERTY IN
25 FORECLOSURE OR SUBJECT TO A TRUSTEE'S SALE OR, IF APPLICABLE, IN DEFAULT. IN
26 ANY ACTION BROUGHT TO ENFORCE A RESCISSION PURSUANT TO SUBSECTION E OF THIS
27 SECTION, A COURT MAY AWARD TO A PREVAILING EQUITY SELLER COSTS AND REASONABLE
28 ATTORNEY FEES.

29 G. AN EQUITY SELLER MAY BRING AN ACTION FOR THE RECOVERY OF DAMAGES OR
30 EQUITABLE RELIEF AGAINST AN EQUITY PURCHASER FOR A VIOLATION OF SECTION
31 33-763, SUBSECTION A, B OR E, SECTION 33-765 OR THIS SECTION. A COURT MAY
32 AWARD TO A PREVAILING EQUITY SELLER ACTUAL DAMAGES PLUS REASONABLE ATTORNEY
33 FEES AND COSTS. IN ADDITION, THE COURT MAY AWARD EQUITABLE RELIEF OR
34 INCREASE THE AWARD IN AN AMOUNT NOT TO EXCEED THREE TIMES THE EQUITY SELLER'S
35 ACTUAL DAMAGES, OR BOTH, IF THE COURT DEEMS SUCH AN AWARD PROPER. ANY ACTION

1 BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN SIX YEARS AFTER
2 THE DATE OF THE ALLEGED VIOLATION.

3 H. ANY EQUITY PURCHASER WHO:

4 1. WITH INTENT TO DEFRAUD, VIOLATES SUBSECTION A, B, C OR D OF THIS
5 SECTION OR ENGAGES IN ANY PRACTICE THAT WOULD OPERATE AS CRIMINAL FRAUD OR
6 DECEIT ON AN EQUITY SELLER, ON CONVICTION, IS GUILTY OF A CLASS 5 FELONY AND
7 IS SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR
8 IMPRISONMENT, OR BOTH.

9 2. KNOWINGLY VIOLATES SUBSECTION A, B, C OR D OF THIS SECTION, ON
10 CONVICTION, IS GUILTY OF A CLASS 1 MISDEMEANOR AND IS SUBJECT TO A FINE OF
11 NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH. A
12 SECOND OFFENSE WITHIN FIVE YEARS IS A CLASS 5 FELONY AND IS SUBJECT TO A FINE
13 OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS OR IMPRISONMENT, OR BOTH.

14 3. IF ACTING IN GOOD FAITH, VIOLATES SUBSECTION A, B, C OR D OF THIS
15 SECTION IS NOT GUILTY OF THE VIOLATION IF THE EQUITY PURCHASER:

16 (a) ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMPLIANCE
17 FAILURE WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR
18 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID
19 SUCH ERRORS.

20 (b) NOTIFIES THE EQUITY SELLER WITHIN NINETY DAYS AFTER THE CONTRACT
21 DATE OF THE COMPLIANCE FAILURE.

22 (c) MAKES APPROPRIATE RESTITUTION TO THE EQUITY SELLER AND APPROPRIATE
23 ADJUSTMENTS TO THE TRANSACTION WITHIN NINETY DAYS AFTER THE CONTRACT DATE.
24 EXAMPLES OF BONA FIDE ERRORS INCLUDE CLERICAL, CALCULATION, COMPUTER
25 MALFUNCTION AND PROGRAMMING AND PRINTING ERRORS. AN ERROR OF LEGAL JUDGMENT
26 WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS ARTICLE IS NOT A BONA FIDE
27 ERROR, NOR IS A FAILURE TO PROVIDE NOTICES OR OTHER MATERIAL INFORMATION
28 REQUIRED BY THIS ARTICLE.

29 33-765. Mortgage loan transaction; reconveyance; requirements;
30 definitions

31 A. IN ADDITION TO THE REQUIREMENTS OF THIS ARTICLE, A TRANSACTION
32 DEEMED TO BE A MORTGAGE LOAN UNDER THIS ARTICLE IS SUBJECT TO ARTICLES 1 AND
33 2 OF THIS CHAPTER.

34 B. ANY TRANSACTION IN WHICH AN EQUITY SELLER PURPORTS TO GRANT A
35 RESIDENCE THAT IS IN FORECLOSURE, SUBJECT TO A TRUSTEE'S SALE OR IN DEFAULT

1 TO AN EQUITY PURCHASER BY ANY INSTRUMENT THAT APPEARS TO BE AN ABSOLUTE
2 CONVEYANCE AND RESERVES TO THE EQUITY SELLER OR IS GIVEN BY THE EQUITY
3 PURCHASER AN OPTION TO REPURCHASE CREATES A PRESUMPTION THAT THE TRANSACTION
4 IS A LOAN TRANSACTION, WHICH MAY BE OVERCOME BY CLEAR AND CONVINCING EVIDENCE
5 TO THE CONTRARY, AND THAT THE PURPORTED ABSOLUTE CONVEYANCE IS A MORTGAGE OR
6 DEED OF TRUST.

7 C. AN EQUITY PURCHASER SHALL NOT ENTER INTO A RECONVEYANCE ARRANGEMENT
8 UNLESS:

9 1. THE EQUITY PURCHASER VERIFIES BY APPROPRIATE DOCUMENTATION THAT THE
10 EQUITY SELLER HAS OR IS LIKELY TO HAVE A REASONABLE ABILITY TO PAY FOR THE
11 SUBSEQUENT CONVEYANCE OF AN INTEREST BACK TO THE EQUITY SELLER. IN THE CASE
12 OF A LEASE WITH AN OPTION TO PURCHASE, PAYMENT ABILITY ALSO INCLUDES THE
13 REASONABLE ABILITY TO PURCHASE THE PROPERTY WITHIN THE TERM OF THE OPTION TO
14 PURCHASE. THERE IS A REBUTTABLE PRESUMPTION THAT THE EQUITY PURCHASER HAS
15 NOT VERIFIED REASONABLE PAYMENT ABILITY IF THE EQUITY PURCHASER HAS NOT
16 OBTAINED DOCUMENTS OTHER THAN A STATEMENT BY THE EQUITY SELLER OF ASSETS,
17 LIABILITIES AND INCOME. THE STANDARD FOR DETERMINING A REASONABLE ABILITY TO
18 PAY SHALL BE THE SAME GUIDELINES AS SET FORTH BY THE UNITED STATES DEPARTMENT
19 OF HOUSING AND URBAN DEVELOPMENT'S FEDERAL HOUSING ADMINISTRATION.

20 2. THE EQUITY PURCHASER AND THE EQUITY SELLER COMPLETE A CLOSING FOR
21 ANY RECONVEYANCE ARRANGEMENT IN WHICH THE EQUITY PURCHASER OBTAINS A DEED OR
22 MORTGAGE FROM AN EQUITY SELLER. FOR THE PURPOSES OF THIS PARAGRAPH,
23 "CLOSING" MEANS AN IN-PERSON MEETING TO COMPLETE FINAL DOCUMENTS INCIDENT TO
24 THE SALE OF THE REAL PROPERTY OR CREATION OF A MORTGAGE OR DEED OF TRUST ON
25 THE REAL PROPERTY CONDUCTED BY A LICENSED ESCROW AGENT OR AN ATTORNEY WHO IS
26 NOT EMPLOYED BY OR AN AFFILIATE OF THE EQUITY PURCHASER.

27 3. THE EQUITY PURCHASER OBTAINS WRITTEN CONSENT FROM THE EQUITY SELLER
28 BEFORE THE EQUITY PURCHASER GRANTS ANY INTEREST IN THE PROPERTY TO ANYONE
29 ELSE DURING THE TIME THE EQUITY SELLER MAINTAINS AN INTEREST IN THE PROPERTY,
30 INCLUDING AN OPTION TO REPURCHASE.

31 4. THE EQUITY PURCHASER NOTIFIES ALL EXISTING DEED OF TRUST OR
32 MORTGAGE LIEN HOLDERS OF THE EQUITY PURCHASER'S INTENT TO ACCEPT CONVEYANCE
33 OF AN INTEREST IN THE PROPERTY FROM THE EQUITY SELLER AND FULLY COMPLIES WITH
34 ALL TERMS AND CONDITIONS CONTAINED IN THE DEED OF TRUST OR MORTGAGE LIEN

1 DOCUMENTS, INCLUDING DUE-ON-SALE PROVISIONS OR MEETING ALL QUALIFICATION
2 REQUIREMENTS FOR ASSUMING THE REPAYMENT OF THE MORTGAGE OR DEED OF TRUST.

3 D. AN EQUITY PURCHASER SHALL NOT ENTER INTO REPURCHASE OR LEASE TERMS
4 AS PART OF THE RECONVEYANCE ARRANGEMENT THAT ARE UNFAIR OR COMMERCIALY
5 UNREASONABLE AND SHALL NOT ENGAGE IN ANY OTHER UNFAIR OR UNCONSCIONABLE
6 CONDUCT.

7 E. AS PART OF A RECONVEYANCE ARRANGEMENT, AN EQUITY PURCHASER SHALL
8 EITHER:

9 1. ENSURE THAT TITLE TO THE RESIDENCE IS RECONVEYED TO THE EQUITY
10 SELLER.

11 2. MAKE A PAYMENT TO THE EQUITY SELLER IN AN AMOUNT OF AT LEAST
12 EIGHTY-TWO PER CENT OF THE FAIR MARKET VALUE OF THE PROPERTY WITHIN ONE
13 HUNDRED TWENTY DAYS AFTER EITHER THE EVICTION OF OR VOLUNTARY RELINQUISHMENT
14 OF POSSESSION OF THE RESIDENCE BY THE EQUITY SELLER. THE EQUITY PURCHASER
15 SHALL MAKE A DETAILED ACCOUNTING OF THE BASIS FOR THE PAYMENT AMOUNT OR A
16 DETAILED ACCOUNTING OF THE REASONS FOR FAILURE TO MAKE A PAYMENT, INCLUDING
17 PROVIDING WRITTEN DOCUMENTATION OF EXPENSES, WITHIN THE ONE HUNDRED TWENTY
18 DAY PERIOD. THE ACCOUNTING SHALL BE ON A FORM PRESCRIBED BY THE DEPARTMENT
19 OF FINANCIAL INSTITUTIONS. FOR PURPOSES OF THIS SUBSECTION:

20 (a) THERE IS A REBUTTABLE PRESUMPTION THAT AN APPRAISAL BY A PERSON
21 LICENSED OR CERTIFIED BY AN AGENCY OF THE FEDERAL GOVERNMENT OR THIS STATE TO
22 APPRAISE REAL ESTATE ESTABLISHES THE FAIR MARKET VALUE OF THE PROPERTY.

23 (b) THE TIME FOR DETERMINING THE FAIR MARKET VALUE AMOUNT SHALL BE
24 DETERMINED IN THE RECONVEYANCE ARRANGEMENT EITHER AT THE TIME OF THE
25 EXECUTION OF THE RECONVEYANCE ARRANGEMENT OR AT RESALE TO A BONA FIDE
26 PURCHASER. IF THE COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL
27 BE DETERMINED AT THE TIME OF RESALE, THE FAIR MARKET VALUE SHALL BE THE
28 RESALE PRICE IF IT IS SOLD WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EVICTION
29 OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY BY THE EQUITY SELLER. IF THE
30 COVERED CONTRACT STATES THAT THE FAIR MARKET VALUE SHALL BE DETERMINED AT THE
31 TIME OF RESALE AND THE RESALE IS NOT COMPLETED WITHIN ONE HUNDRED TWENTY DAYS
32 AFTER THE EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY BY THE EQUITY
33 SELLER, THE FAIR MARKET VALUE SHALL BE DETERMINED BY AN APPRAISAL CONDUCTED
34 WITHIN TEN DAYS AFTER THE END OF THE ONE HUNDRED TWENTY DAY PERIOD, AND
35 PAYMENT, IF REQUIRED, SHALL BE MADE TO THE EQUITY SELLER. IF PAYMENT IS NOT

1 MADE TO THE EQUITY SELLER AT THE TIME, THE FAIR MARKET VALUE SHALL BE
2 RECALCULATED AS THE RESALE PRICE ON RESALE, AND PAYMENT SHALL BE MADE TO THE
3 EQUITY SELLER WITHIN FIFTEEN DAYS AFTER RESALE. A DETAILED ACCOUNTING OF THE
4 BASIS FOR THE PAYMENT AMOUNT SHALL BE MADE WITHIN FIFTEEN DAYS OF RESALE,
5 INCLUDING PROVIDING WRITTEN DOCUMENTATION OF EXPENSES. THE ACCOUNTING SHALL
6 BE ON A FORM PRESCRIBED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

7 F. THIS SECTION DOES NOT ABROGATE ANY DUTY OF INQUIRY THAT EXISTS AS
8 TO RIGHTS OR INTERESTS OF PERSONS IN POSSESSION OF THE RESIDENTIAL REAL
9 PROPERTY THAT IS IN FORECLOSURE, SUBJECT TO TRUSTEE'S SALE OR IN DEFAULT.

10 G. ALL DEEDS OR CONVEYANCES SUBJECT TO A RECONVEYANCE ARRANGEMENT
11 SHALL STATE EXPLICITLY ON THE FACE OF THE DOCUMENT THAT THE CONVEYANCE IS
12 SUBJECT TO A RECONVEYANCE ARRANGEMENT AND SHALL STATE IN THE BODY OF THE
13 CONVEYANCE INSTRUMENT THE TERMS OF THE RECONVEYANCE ARRANGEMENT. ALL
14 RECONVEYANCE ARRANGEMENTS MUST BE SIMULTANEOUSLY RECORDED BY THE EQUITY
15 PURCHASER WITH THE SUBJECT DEED IN THE COUNTY RECORDER'S OFFICE WHERE THE
16 PROPERTY IS LOCATED.

17 H. FOR THE PURPOSES OF THIS SECTION:

18 1. "CONSIDERATION" MEANS ANY PAYMENT OR THING OF VALUE PROVIDED TO THE
19 EQUITY SELLER, INCLUDING UNPAID LEASE PAYMENTS OWED BY THE EQUITY SELLER
20 BEFORE THE DATE OF EVICTION OR VOLUNTARY RELINQUISHMENT OF THE PROPERTY,
21 REASONABLE COSTS PAID TO THIRD PARTIES NECESSARY TO COMPLETE THE RECONVEYANCE
22 TRANSACTION, PAYMENT OF MONIES TO SATISFY A DEBT OR LEGAL OBLIGATION OF THE
23 EQUITY SELLER OR THE REASONABLE COST OF REPAIRS FOR DAMAGE TO THE DWELLING
24 CAUSED BY THE EQUITY SELLER BEYOND ORDINARY WEAR AND TEAR, BUT DOES NOT
25 INCLUDE AMOUNTS IMPUTED AS ANY FEE PAID DIRECTLY OR INDIRECTLY TO THE EQUITY
26 PURCHASER, OR THE EQUITY PURCHASER'S REPRESENTATIVE, INCIDENT TO A
27 RECONVEYANCE ARRANGEMENT, EXCEPT FOR REASONABLE COSTS PAID TO THIRD PARTIES
28 NECESSARY TO COMPLETE THE RECONVEYANCE.

29 2. "RESALE" MEANS A BONA FIDE MARKET SALE OF THE PROPERTY SUBJECT TO
30 THE RECONVEYANCE ARRANGEMENT BY THE EQUITY PURCHASER TO AN UNAFFILIATED THIRD
31 PARTY.

32 3. "RESALE PRICE" MEANS THE PURCHASE PRICE OF THE PROPERTY ON RESALE.

33 33-766. Limiting provisions

34 ANY PROVISION OF A COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO LIMIT
35 THE LIABILITY OF THE EQUITY PURCHASER UNDER THIS ARTICLE IS VOID. INCLUSION

1 OF THE PROVISION, AT THE OPTION OF THE EQUITY SELLER, SHALL RENDER THE
2 COVERED CONTRACT VOID. THE EQUITY PURCHASER IS LIABLE TO THE EQUITY SELLER
3 FOR ALL DAMAGES PROXIMATELY CAUSED BY THE PROVISION. ANY PROVISION IN A
4 COVERED CONTRACT THAT ATTEMPTS OR PURPORTS TO REQUIRE ARBITRATION OF ANY
5 DISPUTE ARISING UNDER THIS ACT SHALL BE VOID AT THE OPTION OF THE EQUITY
6 SELLER.

7 33-767. Injunction; civil penalty

8 IN ADDITION TO THE OTHER REMEDIES PROVIDED, IF A VIOLATION OF THIS
9 ARTICLE OCCURS, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME
10 OF THE PEOPLE OF THIS STATE TO A COURT OR JUSTICE HAVING JURISDICTION BY A
11 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION AND, ON NOTICE TO THE DEFENDANT OF
12 AT LEAST FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATIONS.
13 IF THE COURT OR JUSTICE DETERMINES THAT THE DEFENDANT HAS VIOLATED THIS
14 ARTICLE, THE COURT OR JUSTICE MAY ISSUE AN INJUNCTION ENJOINING AND
15 RESTRAINING ANY FURTHER VIOLATION WITHOUT REQUIRING PROOF THAT ANY PERSON HAS
16 ACTUALLY BEEN INJURED OR DAMAGED. IN ANY PROCEEDING, THE COURT MAY MAKE
17 ALLOWANCES TO THE ATTORNEY GENERAL PURSUANT TO ALL APPLICABLE LAWS OR RULES
18 AND DIRECT RESTITUTION. IF THE COURT DETERMINES THAT A VIOLATION OF THIS
19 ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN
20 TWENTY-FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH
21 PROPOSED APPLICATION, THE ATTORNEY GENERAL MAY TAKE PROOF AND MAKE A
22 DETERMINATION OF THE RELEVANT FACTS AND ISSUE SUBPOENAS IN ACCORDANCE WITH
23 ALL APPLICABLE LAWS AND RULES.

24 33-768. Prior lien holder

25 THIS ARTICLE DOES NOT APPLY TO A PRIOR LIEN HOLDER IF THE LIEN WAS
26 PROPERLY RECORDED BEFORE THE EXECUTION OF ANY COVERED CONTRACT BY BOTH THE
27 EQUITY SELLER AND THE EQUITY PURCHASER, AND THIS ARTICLE SHALL NOT IMPAIR ANY
28 EQUITY OR OTHER AVAILABLE RIGHTS OF ANY PRIOR LIEN HOLDER.

29 33-769. Article provisions not exclusive; rights and
30 obligations not affected; waivers void; severability

31 A. THIS ARTICLE IS NOT EXCLUSIVE AND IS IN ADDITION TO ANY OTHER
32 REQUIREMENTS, RIGHTS, REMEDIES AND PENALTIES PROVIDED BY LAW.

33 B. THIS ARTICLE DOES NOT AFFECT OR ALTER THE RIGHTS AND OBLIGATIONS OF
34 A MORTGAGOR AND A MORTGAGEE WITH RESPECT TO A MORTGAGE, OR A TRUSTOR, TRUSTEE
35 OR BENEFICIARY WITH RESPECT TO A DEED OF TRUST.

1 C. ANY WAIVER OF ANY PROVISION OF THIS ARTICLE IS VOID AND
2 UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.

3 D. IF ANY PROVISION OF THIS ARTICLE OR ANY APPLICATION OF THIS ARTICLE
4 TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF
5 THIS ARTICLE AND THE APPLICATION OF ITS PROVISIONS TO OTHER PERSONS AND
6 CIRCUMSTANCES SHALL NOT BE AFFECTED.

7 Sec. 4. Short title

8 This act shall be known and may be cited as the "Arizona home equity
9 theft prevention act".

10 Amend title to conform

BILL KONOPNICKI

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